

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

DENNIS MEKEITHAN
PLAINTIFF

NO. 1:11-01441

v.

J. KERESTES ET AL.
DEFENDANTS

FILED
SCRANTON

JUN 23 2014

PER

DEPUTY CLERK

A.) PLAINTIFF'S OBJECTIONS TO PART
OF THE MAGISTRATES REPORT AND
RECOMMENDATION

1) PLAINTIFF COMES NOW TO PRESENT HIS
OBJECTIONS TO THE PART OF THE
MAGISTRATES REPORT AND RECOMMENDATION
THAT RECOMMEND THE DEFENDANTS BE
GRANTED SUMMARY JUDGMENT ON TWO
OF PLAINTIFFS CLAIMS. ① PLAINTIFF'S
EIGHTH AMENDMENT CLAIM PERTAINING TO
THE 24 hr. LIGHT IN THE RHU CELLS AT
SCI MAHANOA AND ② PLAINTIFF'S
FOURTEENTH AMENDMENT CLAIM OF DENIAL
OF EQUAL TREATMENT WITH OTHER
RESTRICTED RELEASE LIST INMATES
ON ADMINISTRATIVE CUSTODY TO

①

HAVE T.V. ON LONG TERM ADMINISTRATIVE CUSTODY AFTER 90 DAYS ON RESTRICTED RELEASE.

- 2) PLAINTIFF IS A PENNSYLVANIA STATE PRISONER IN 24 H. SOLITARY CONFINEMENT IN THE (RHU) RESTRICTED HOUSING UNIT, ON RESTRICTED RELEASE.
- 3) RESTRICTED RELEASE LIST CONSIST OF ABOUT 90 INMATES SPREADED AMONGST ALL STATE PRISONS RHU'S, ON DISCIPLINARY AND ADMINISTRATIVE CUSTODY. THESE INMATES CANNOT BE RELEASED BACK TO GENERAL POPULATION BY THEIR RESPECTIVE PROGRAM REVIEW COMMITTEES LIKE ALL OTHER RHU INMATES. ONLY THE SECRETARY OF CORRECTIONS CAN RELEASE "RRL" INMATES LIKE PLAINTIFF. PLAINTIFF HAS BEEN IN THE RHU 6000 ON 5 YEARS, OTHERS HAVE BEEN IN THE RHU 30 MRS. THE PRIVILEGED RRL INMATES ARE PERMITTED SUCH AS T.V. CAN MEAN THE DIFFERENCE BETWEEN SANITY AND INSANITY WHICH IS WHY THE D.O.C. ALLOW T.V. PRIVILEGES FOR RRL A.C. STATUS INMATES AFTER 90 DAYS ON RRL.

- 4) WHEN THE COURT CONSIDERS A MOTION FOR SUMMARY JUDGEMENT, IT IS SUPPOSE TO VIEW THE EVIDENCE SUBMITTED BY BOTH SIDES IN THE LIGHT MOST FAVORABLE TO THE PARTY OPPOSING THE MOTION (WHICH IN THIS CASE IS PLAINTIFF). UNITED STATES V. DIERBOLD 369 U.S. 654 (1962); ADICKES V. S.H. KRESS + CO. 398 U.S. 144 (1970) SEE ALSO, UNITED STATES V. WESTERN ELECTRICAL CO. 337 F.2d 568 (9th Cir. 1964).
- 5) THE OPPOSING PARTY IS SUPPOSE TO BE GIVEN THE BENEFIT OF THE DOUBT BECAUSE THE PURPOSE OF HAVING SUMMARY JUDGMENT IS NOT TO CUT PEOPLE OFF FROM TRIAL WHERE THERE IS A GENUINE ISSUE TO BE DECIDED.
- 6) IN THE TWO CLAIMS AT ISSUE IN THESE OBJECTIONS THERE ARE GENUINE ISSUES TO BE DECIDED, IN DISPUTE.
- 7) PLAINTIFF SUBMITTED WITNESS AFFIDAVITS AS WELL AS HIS OWN DECLARATION IN SUPPORT OF HIS EIGHTH AMENDMENT CLAIM AS EXHIBITS #D-2, D-3, C-3 WITH HIS OPPOSITION BRIEF, AND DIRECT THIS COURT TO THEM.

- 8) PLAINTIFF ALSO SUBMITTED WITNESS AFFIDAVITS AS WELL AS HIS OWN DECLARATION IN SUPPORT OF HIS 14TH AMENDMENT EQUAL PROTECTION CLAIM AS EXHIBITS *C2, *C3, *C4, *D3 AND AS EXH. *C1 HE SUBMITTED DC-ADM. 802 REVISED POLICY GIVING ALL RRL (RESTRICTED RELEASE LIST) ADMINISTRATIVE CUSTODY INMATES THE SAME RIGHT TO PRIVILEGES, INCLUDING T.O.V. AT ALL PENNSYLVANIA STATE PRISONS RHU'S. AND THE AFFIDAVITS VERIFYING THAT THESE DEFENDANT CREATED THEIR OWN DE FACTO POLICY VOWING THAT THEY WOULD NEVER FOLLOW THIS POLICY AND GRANT T.O.V. PRIVILEGES TO PLAINTIFF OR ANY OTHER INMATE IN THE RHU AT MANAHOT, AND THEY DIDN'T.
- 9) THESE FACTS AND EVIDENCE A GENUINE ISSUE TO BE DECIDED.
- THERE IS A REAL DISPUTE ON BOTH OF THESE CLAIMS THAT BY LAW SHOULD BE SENT TO A JURY.
- 10) IF THE COURT HAS VIEWED THE EVIDENCE SUBMITTED, IN LIGHT MOST FAVORABLE TO THE PARTY OPPOSING THE MOTION (PLAINTIFF) THEN THE MAGISTRATE RECOMMENDATION ~~THAT~~ DEFENDANTS BE GRANTED SUMMARY JUDGMENT ON THESE TWO CLAIMS SHOULD NOT BE ADOPTED.

B.)

DELETED ALL ATTEMPTS AT
DISCOVERY

- 11) THE COURTS HAVE LONG HELD THAT SUMMARY JUDGMENT IS INAPPROPRIATE WHEN THE PARTY OPPOSING THE MOTION COULD NOT OBTAIN AFFIDAVITS FROM PRISONER WITNESSES, AND DISCOVERY, PARTICULARLY WHEN OPPOSING PARTY IS A PRISONER HELD IN SOLITARY CONFINEMENT, IN VIEW OF THE LANGUAGE OF FED. R. CIV. P. 56(F), BRACEY V. HERRING 466 F.2d 702 (7th Cir. 1972), ALSO CITING HUDSON V. HARDY 412 F.2d 1091 (D.C. Cir. 1968)
- 12) IN THIS CASE PLAINTIFF HAS BEEN IN SOLITARY CONFINEMENT SINCE OCT. 2009 (4 YRS. 8 MONTHS) •
- 13) PLAINTIFF WAS DELETED HIS MOTION TO COMMUNICATE WITH INMATE WITNESSES AT SCI MANAHOY AND OTHER PRISONS TWICE EACH TO OBTAIN AFFIDAVITS ON THE TWO CLAIMS INVOLVED IN THIS APPEAL •
- 14) INITIALLY THE COURT GRANTED PLAINTIFF MOTION, BUT WHEN THE DEFENDANTS

REFUSE TO HONOR THE COURT ORDER, AND PLAINTIFF FILED A MOTION TO ENFORCE THEIR ORDER, DEFENDANTS FILED AN UNTIMELY REQUEST TO RECONSIDER THEIR ORDER, AND THEY RECALLED ITS ORDER GRANTING PLAINTIFF MOTION TO CONTACT WITNESS AT OTHER PRISONS, BASED ON A FALSE CLAIM OF SECURITY, SINCE PLAINTIFF HAD AGREED TO ANY RESTRICTIONS THE PRISON OFFICIALS WANTED.

- 15) PLAINTIFF HAD NO OTHER MEANS TO CONTACT THESE WITNESS.
- 16) PLAINTIFF FILED INTERROGATORIES, 90% OF THEM WERE NOT ANSWERED.
- 17) PLAINTIFF ASK THE COURT TO DO AN IN-CAMERA REVIEW OF THE LONG-60 WATT FLORESCENT LIGHT BULBS TO SHOW THAT DEFENDANTS CLAIM OF A 7 WATT BULB WAS A FALSE AND PERJURED DECLARATION, BUT THE COURT DIDNT. BECAUSE OF THIS, THE MAGISTRATE RECOMMENDATION ON THIS CLAIM IS BASED ON A FALSE AND PERJURED STATEMENT BY DEFENDANTS.

C.) PLAINTIFF APPEAL OF THE MAGISTRATE RECOMMENDATION PERTAINING TO THIS PLAINTIFFS EIGHTH AMENDMENT CLAIM

- 18) THE MAGISTRATE RECOMMENDATION THAT THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT ON THIS CLAIM SHOULD BE GRANTED, IS BASED ON HIS ACCEPTANCE OF FALSE AND PERJURED DECLARATIONS OF DEFENDANTS AND THEIR AGENTS AS EVIDENCE, WHICH IS CONTRARY TO LAW. COPIES OF REPORTS MADE OUT BY THE DEFENDANTS AND OTHER PRISON STAFF DO NOT COUNT AS PROOF FOR THE DEFENDANTS, SINCE PRISON OFFICIALS CAN SAY ANYTHING THEY WANT, BRACEY V. HERRING 466 F.2d 702 (7th Cir. 1972).
- 19) IF THE COURTS ARE SUPPOSE TO VIEW THE EVIDENCE IN LIGHT MOST FAVORABLE TO THE PARTY OPPOSING THE MOTION, THEN THE MAGISTRATE RECOMMENDATION SHOULD NOT BE ADOPTED ON THIS CLAIM. WHEREAS PLAINTIFF SUBMITTED WITNESS AFFIDAVITS AS EXHIBITS C-3, D-3 D-4, AND PLAINTIFFS AFFIDAVIT AS EXHIBIT D-2 IN SUPPORT OF THIS CLAIM AND DISPUTING THE DEFENDANTS VERSIONS. UNITED STATES V. DIEBOLD, 369 U.S. 654 (1962) ADICKES V. S.H. KRESS & CO, 398 U.S. 144 (1970), SEE ALSO UNITED STATES V. WESTERN

ELECTRICAL CO., 337 F.2d 568 (9th Cir. 1964)

- 20) THE LAW IS CLEAR IN THAT THE OPPOSING PARTY (PLAINTIFF) IS SUPPOSE TO BE GIVEN THE BENEFIT OF THE DOUBT BECAUSE THE PURPOSE OF HAVING SUMMARY JUDGMENT IS NOT TO CUT PEOPLE OFF FROM TRIAL WHERE THERE IS A GENUINE ISSUE TO BE DECIDED.
- 21) THE DEFENDANTS PRESENTED FALSE DECLARATIONS CLAIMING THAT THE 24 IN. LIGHT IN THE CELLS ARE 7 WATT BULBS.
- 22) PLAINTIFF SUBMITTED WITNESS DECLARATIONS AS WELL AS HIS OWN AS EXHIBITS C-3, D-2, D-3, D4 SUPPORTING HIS CLAIM THAT THE 24 IN. LIGHTS IN THE CELLS AT SCHEMMANHAUSEN ARE 60 WATT SOFT HIGH INTENSITY FLORESCENT LIGHT BULBS (LONG).
- 23) THIS IS A GENUINE ISSUE IN DISPUTE.
- 24) THE CONDITIONS DESCRIBED BY PLAINTIFF IN HIS COMPLAINT IS REMINISCENT OF OLD NAZI GERMANY TORTURE TACTICS TO TERRORIZE PRISONERS, EVEN IN CRIMINAL CASES, COURTS HAVE THROWN OUT STATEMENTS DUE TO THIS TYPE OF TORTURE TACTIC.

25) THIS IS NOT SHORT TERM TORTURE, THIS IS YEARS, 24 HRS A DAY UNDER THESE HIGH INTENSITY FLORESCENT LIGHT BULBS

26) IT IS UNDISPUTABLE THAT THE TREATMENT A PRISONER RECEIVES IN PRISON AND THE CONDITIONS UNDER WHICH HE IS CONFINED ARE SUBJECT TO SCRUTINY UNDER THE EIGHTH AMENDMENT.
FARMER V. BRENNAN 511 U.S. 825 (1994)
 QUOTING HELLING V. MEKINNEY, 509 U.S. 25, 31 (1993)

27) THE MAGISTRATE INCORRECTLY STATE PLAINTIFF CLAIM HE SUFFERED MEMORY LOST.

PLAINTIFF SUBMITTED WITH HIS OPPOSITION BRIEF AS EXHIBIT #B-1 A COPY OF HIS SETTLEMENT WITH THE D.O.C. IN WHICH THEY ACKNOWLEDGE HIS MEMORY IMPAIRMENT, AND PLAINTIFF SUBMITTED AS EXHIBIT #B-2 WITH HIS OPPOSITION BRIEF, A COPY OF REQUEST TO PSYCHIATRIST DR. SANDERELLI AT FRACKVILLE ABOUT MEMORY LOST AND SLEEP DEPRIVATION.

THESE CONDITIONS ARE DOCUMENTED IN PLAINTIFF'S MEDICAL FILE AND WAS INTENSIFIED BY THE CONDITIONS AT ISSUE HERE.

- 28) THIS IS NOT A CASE ABOUT A DIM NIGHT LIGHT, THIS CASE IS ABOUT THE MAIN CELL LIGHT BEING ON ALL DAY AND EVENING FOR NO PENALOGICAL REASON (SEE EXH. *D-2 AND D-3) FILED WITH OPPOSITION BRIEF. 60 WATT SOFT HIGH INTENSITY FLORESCENT LIGHT BULBS.
- 29) REQUIRING INMATES TO LIVE IN CONSTANT ILLUMINATION UNDER CERTAIN CIRCUMSTANCES MAY RISE TO THE LEVEL OF AN EIGHTH AMENDMENT VIOLATION / BROWN V. MARTINEZ, 2007 WL 2225842 AT 8 (M.D. PA. JULY 31, 2007) CITING BACON V. MILNER, 229 F.3D 1000 (3RD CIR. APRIL 19, 2007).
- 30) THIS IS A GENUINE ISSUE THAT A JURY SHOULD DECIDE.
- 1 THE FACT THAT DEFENDANTS MADE A FALSE DECLARATION THAT THE MAIN CELL LIGHT AT ISSUE IS 7 WATTS WHEN IT IS 60 WATT, SOFT HIGH INTENSITY FLORESCENT BULB IS A DISPUTABLE FACT AND A GENUINE ISSUE TO BE DECIDED.

IN PLAINTIFF OPPOSITION BRIEF
EXH. # B-1, B-2, B-3 which VERIFY
PLAINTIFF'S MEMORY IMPAIRMENT, ALSO
PROVE THAT THE DEFENDANTS FILED
ANOTHER FALSE DECLARATION by
VICKI STANISHEFSKI.

EXHIBITS: # C-3, D-2, D-3, D-4 which
WAS FILED WITH PLAINTIFF OPPOSITION
BRIEF IN SUPPORT OF THIS CLAIM
AND IN DISPUTE OF DEFENDANTS
VERSIONS, CREATE A GENUINE ISSUE
TO BE DECIDED by A JURY.

THE MAGISTRATE RECOMMENDATION
THAT DEFENDANTS BE GRANTED SUMMARY
JUDGMENT ON THIS 14th AMENDMENT
CLAIM OF DENIAL OF EQUAL PROTECTION
SHOULD NOT BE ADOPTED.

D.) PLAINTIFF APPEAL OF THE MAGISTRATES
RECOMMENDATION PERTAINING TO THIS
PLAINTIFFS FOURTEENTH AMENDMENT
EQUAL PROTECTION CLAIM

- 31) THE MAGISTRATE RECOMMENDATION THAT
THE DEFENDANTS MOTION FOR SUMMARY
JUDGMENT ON PLAINTIFF EQUAL PROTECTION
CLAIM SHOULD BE GRANTED IS
CONTRARY TO LAW, AND EVIDENCE
PRESENTED VIA PLAINTIFF WITNESS
AFFIDAVITS AS EXHIBITS C-2, C-3, C-4
D-3, INCLUDING PLAINTIFFS OWN
DECLARATION, AS WELL AS EXH. # C-2
LETTER TO D.O.C. AND EXH. C-1 D.O.C
REVISED POLICY DC-ADM. 802, FILED
WITH PLAINTIFF OPPOSITION BRIEF.
- 32) IF THE COURTS ARE SUPPOSE TO VIEW
THE EVIDENCE IN LIGHT MOST FAVORABLE
TO THE PARTY OPPOSING THE MOTION,
THEN THE MAGISTRATE RECOMMENDATION
SHOULD NOT BE ADOPTED ON THIS CLAIM.
- 33) THERE IS A GENUINE ISSUE IN
DISPUTE.
- UNITED STATES V. DIEBOLD, 369 U.S.
654 (1962), ADICKES V. S.H. KRESS & CO.

398 U.S. 144 (1970), SEE ALSO UNITED STATES V. WESTERN ELECTRICAL CO.
337 F.2d 568 (9th Cir 1964),

- 34) THE LAW IS CLEAR THAT THE OPPOSING PARTY (PLAINTIFF) IS SUPPOSE TO BE GIVEN THE BENEFIT OF THE DOUBT BECAUSE THE PURPOSE OF HAVING SUMMARY JUDGMENT IS NOT TO CUT PEOPLE OFF FROM TRIAL WHERE THERE IS A GENUINE ISSUE TO BE DECIDED.
- 35) THE GRAVAMEN OF A COMPLAINT FOR DENIAL OF EQUAL PROTECTION IS THAT SIMILARLY SITUATED INDIVIDUALS ARE TREATED EQUALLY, SEE: CITY OF CLEBURNE TEXAS V. CLEBURNE LIVING CENTER, 473 U.S. 432 (1985)
- 36) PLAINTIFF WAS PLACED ON RESTRICTED RELEASE LIST, WHICH IS AN INDEFINITE SANCTION IN SOLITARY CONFINEMENT UNDER THE GUISE OF ADMINISTRATIVE CUSTODY. AS SUCH THE D.O.C. ESTABLISH A POLICY WHEREAS AFTER 90 DAYS ON RRL ADMINISTRATIVE CUSTODY

INMATES COULD BE GIVEN THEIR T.V.
(SEE EXH. C-1) FILED WITH WITH
PLAINTIFF OPPOSITION BRIEF.

- 37) ALL RESTRICTED RELEASE LIST (RRL)
INMATES ON ADMINISTRATIVE CUSTODY
AT ALL OTHER PENNSYLVANIA STATE
PRISONS HONORED THIS POLICY AND
WERE PROVIDED THEIR T.V.'S, EXCEPT
AT SCI MANAHAY, WHERE DEFENDANTS
VOWED THEY WOULD NEVER FOLLOW
THIS POLICY UNLESS THEY WERE FORCED
TO. NO RRL INMATE HAD EVER BEEN
GIVEN THEIR T.V. PRIVILEGES AT
MANAHAY.
- 38) THE DEFENDANTS AND MAGISTRATE
CLAIM IT IS DISCRETIONARY, BUT IT
IS NO DISCRETION INVOLVED IF
NO INMATE HAS EVER BEEN GRANTED THIS
PRIVILEGE, AND IF THE DEFENDANTS
CREATED A DE FACTO POLICY THAT DENIED
THIS PRIVILEGE TO ALL RRL OR ALL
ADMINISTRATIVE CUSTODY INMATES,
DENYING THEM EQUAL PROTECTION
COMPARABLE TO ALL RRL INMATES
IN ALL THE OTHER PENNSYLVANIA
STATE PRISONS RMU'S.

SEE: PLAINTIFF AFFIDAVIT FILED AS EXHIBIT C-4 WITH HIS OPPOSITION BRIEF, AND WITNESS AFFIDAVITS FILED AS EXHIBITS C-3, D-3 WITH HIS OPPOSITION BRIEF.

39) THIS COURT DENIED PLAINTIFF MOTION TO CONTACT WITNESSES AT OTHER STATE PRISONS INCLUDING MANHATTAN.

40) EQUAL PROTECTION CLAUSE EMBODIES A GENERAL RULE THAT, STATES MUST TREAT LIKE CASES ALIKE.

IT IS ESSENTIALLY A DIRECTION THAT ALL PERSONS SIMILARLY SITUATED SHOULD BE TREATED ALIKE, VACCO V. QUILL, 521 U.S. 793 (1997)

41) A PRISONER MUST CLAIM AND PROVE THAT THE STATE TREATED HIM OR HER DIFFERENTLY FROM OTHERS WHO WERE SIMILARLY SITUATED AND THAT THE DIFFERENCE IN TREATMENT WAS NOT RATIONALLY RELATED TO ANY LEGITIMATE GOVERNMENTAL INTEREST, SEE: VILLAGE OF WILLOWBROOK V. OLECH 528 U.S. 562 (2000).

- 42) PLAINTIFF WAS IN THE RHU AT SCI MANAHOU FOR 2 YRS TOTALLY MISCONDUCT FREE FROM THE DAY HE WAS PLACED IN THE RHU OCT. 2, 2009 UNTIL OCT. 19, 2011. PLAINTIFF EARNED HIS RADIO, TYPEWRITER, GENERAL POPULATION COMMISSARY AND WEEKLY PHONE CALLS, AS DID OTHER RRL INMATES AT MANAHOU, BUT NOT ONE RRL INMATE EVER RECEIVED THEIR T.V. PRIVILEGES DUE TO THE DEFENDANTS VOW TO NOT ADHERE TO DC-ADM. 802 (EXH. C-1 FILED WITH PLAINTIFF OPPOSITION BRIEF).
- 43) RRL INMATES AT OTHER PRISONS, IN THE RHU FOR MURDERS OF INMATES AND STAFF, FOR STABBINGS, ESCAPES ETC, WAS GRANTED T.V. PRIVILEGES BECAUSE THOSE ADMINISTRATIONS FOLLOW POLICY.
- 44) INMATES WITH 100's OF MISCONDUCTS IN THE RHU FOR ASSAULTS, THROWING BODY FLUIDS ON STAFF AND INMATES, RECEIVE THEIR T.V.'S ONCE ON ADMINISTRATIVE CUSTODY.
- ONLY SCI MANAHOU DENY RRL INMATES EQUAL TREATMENT NO MATTER HOW NON-PROBLEMATIC OR MISCONDUCT FREE, THEY ARE, OR HOW LONG.
- ALL RRL INMATES HAVE A RIGHT TO BE TREATED EQUALLY IF ON THE STATUS AND DEFENDANTS HAVE DENIED THAT.

CONCLUSION

AS A MATTER OF LAW, BASED ON THE EXHIBITS AND WITNESS DECLARATIONS IN SUPPORT OF THE TWO CLAIMS AT ISSUE IN THESE OBJECTIONS, THERE ARE GENUINE ISSUES IN DISPUTE, TO BE DECIDED BY A JURY.

THE MAGISTRATE'S RECOMMENDATION THAT THE DEFENDANTS SHOULD BE GRANTED SUMMARY JUDGMENT ON THESE TWO CLAIMS, SHOULD NOT BE ADOPTED, AND SHOULD REMAIN FOR TRIAL.

Dennis McKeithan
DENNIS M^CKEITHAN
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111 ALTA MONT BLVD
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6-19-14

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

D. McKEITHAN
PLAINTIFF

NO. 1:11-01441

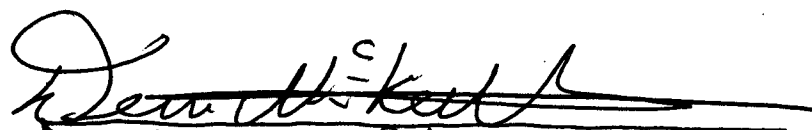
V.

J. KERESTES ET AL
DEFENDANTS

PROOF OF SERVICE

PLAINTIFF CERTIFY THAT ON 6-19-14 HE
DID SEND THE DEFENDANTS A COPY OF
PLAINTIFFS OPPOSITION TO PART OF THE
MAGISTRATE REPORT AND RECOMMENDATION,
SENT VIA U.S. MAIL, POSTAGE PAID TO

JAMIS B. BOYD
ASST. COUNSEL
PA. DEPT. OF CORRECTIONS
1920 TECHNOLOGY PARKWAY
MECHANICSBURG PA. 17050


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JUN 23 2014

PER

DEPUTY CLERK

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MIDDLE DISTRICT OF
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